

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Local Competition and Broadband
Reporting

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CC Docket No. 99-301 /

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

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Winstar Communications, Inc. ("Winstar"), by its attorneys, hereby submits these Comments in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY.

The Commission's efforts to collect data concerning the availability of broadband services have not been as successful as could be desired, and lead to under-reporting of certain broadband services. This is due in large part to the inherent limitations of Form 477. In many cases, carriers completing the form, including Winstar, are essentially trying to fit a square peg into a round hole and some broadband services are left off of the report because there is no place for them. Accordingly, it is appropriate for the Commission to seek comment on ways to improve its data collection efforts. However, rather than suggesting methods to make the Form more straightforward for carriers, the Notice for the most part proposes additional reporting requirements that would make compliance even more difficult.

The Commission should reconsider the nomenclature for reporting broadband lines to conform it to industry and market standards and thus facilitate carrier efforts to complete Form

¹ In re Local Competition and Broadband Reporting, Second Notice of Proposed Rulemaking, CC Docket No. 99-301, FCC 00-19 (rel. Jan. 19, 2001) ("Notice"). A summary of the Notice was published in the Federal Register on February 15, 2001. See 66 Fed. Reg. 10413 (Feb. 15, 2001).

477. If the Commission is committed to collecting data on the availability of all broadband services, including availability to businesses, it should request data on the availability of private lines offering two-way high speed connectivity. The Commission also should encourage carriers to include additional relevant information concerning broadband deployment in the comment section of the Form or attached thereto and should incorporate this information in its reports. Finally, the Commission should not adopt a presumption against the confidentiality of data collected by Form 477.

II. BROADBAND SERVICE SHOULD BE DEFINED WITH REFERENCE TO STANDARD DIGITAL SIGNAL SPEEDS RATHER THAN IN 200 Kbps UNITS.

The Notice asks for comment on whether the Commission has struck the appropriate balance between the burden on carriers and the usefulness of the data collected by Form 477.² The Commission has not achieved an appropriate balance. Complying with the reporting requirements is extremely burdensome for carriers; yet, the data that are reported do not present an accurate picture of the deployment of these services. In order to remedy this unevenness, the Commission should reconsider the way in which it collects data concerning the deployment of broadband services. Specifically, the definition of broadband services should be modified in order to capture more accurate data on broadband deployment using fixed wireless technology.

The Notice states that the Commission “will continue to use the term ‘broadband service’ to refer to those services that deliver information carrying capacity in excess of 200 kbps in at least one direction.”³ Fixed wireless carriers such as Winstar do not provide customer lines in 200 kbps units. Rather, Winstar provides its customers with two-way wireless channels that are

² Notice ¶ 11.

³ Id. ¶ 3.

divisible into units based on the DS- hierarchy of digital signal speeds.⁴ Customers typically purchase capacity in DS-1 units, which they may use as any combination of voice-grade and high-speed lines. To comply with the requirement that data be submitted based on 200 kbps units, Winstar must engage in a fairly complicated exercise of merging and interpreting data from several different databases each time the Form must be filed.⁵ Inevitably, the need for Winstar employees to translate the information into 200 kbps units increases the risk of errors in the information reported, not to speak of the loss of employee time that could otherwise be devoted to Winstar's primary business of providing telecommunications services to customers. Accordingly, Winstar urges the Commission to change the nomenclature for reporting broadband lines to reflect industry standards with respect to transmission speeds, such as the DS- hierarchy of digital signal speeds. Such an approach would promote uniformity among carriers reporting data, reduce the risk of errors, and decrease the burden on carriers.

⁴ See Harry Newton, Newton's Telecom Dictionary 231 (15th ed. 1999)(defining "DS-1" as a digital signal speed of 1.544 Mbps in North America, 2.048 Mbps elsewhere). There are 24 DS-0 channels (the worldwide standard speed for digitizing one voice conversation) in a DS-1. DS-1 is also called T1. Id.

⁵ Because of the complexity of this process, the Commission should not increase the filing frequency of Form 477. See Notice ¶ 28. If any change is made, it should be to reduce the filing frequency to once a year. As the Commission correctly recognizes, an annual filing requirement would mirror the annual publication of its reports on Advanced Telecommunications Capability. Id.

III. THE COMMISSION SHOULD NOT ADOPT THE MORE DETAILED REPORTING REQUIREMENTS PROPOSED IN THE NOTICE OR, IN THE ALTERNATIVE, SHOULD ONLY ADOPT THESE REQUIREMENTS WITH RESPECT TO BROADBAND DEPLOYMENT TO RESIDENTIAL CUSTOMERS.

The proposals contained in the Notice for additional reporting measures⁶ contemplate a level of detailed reporting that would be at worst impossible and at best extremely costly for many carriers to comply with. For example, the Notice asks -- among other things -- whether carriers should be required to “report actual subscribership by zip code,”⁷ “distinguish -- at the zip code level -- between the types of technology used to deliver broadband services,”⁸ and “report data on the availability of services.”⁹ Winstar, like many other carriers, has more than one database containing the relevant data that would be required in order to meet these new and burdensome reporting requirements. Programming their various databases to communicate with each other and ultimately to produce such detailed information each time Form 477 is due would be very time consuming and involve some costs to carriers. The point that the Commission seems to miss in proposing additional measures is that the information required for Form 477 can not be compiled effortlessly, with the flip of a switch, but must be painstakingly gathered and checked for accuracy. Thus, before introducing additional levels of complexity to the information required of carriers as part of Form 477, the burden on carriers must be carefully

⁶ Notice ¶¶ 16-24.

⁷ Id. ¶ 18.

⁸ Id. ¶ 19.

⁹ Id. ¶ 20 (emphasis in original).

considered by the Commission.¹⁰ Moreover, the market has already developed a nomenclature for reporting, which is based on DS-1 units. The Commission must use the industry standard of measurement and not overly complicate matters by insisting upon, and introducing more, non-standard parameters.

In the alternative, the Commission should only require more detailed information with respect to availability of broadband services to residential customers. The Commission's broadband data collection efforts have been focused primarily on "lines that connect end users to the Internet or other public data networks."¹¹ The proposed measures concerning "availability" of service also appear to be tailored to residential customers. For example, the first measure of availability refers to the "number of homes passed by broadband-capable infrastructure."¹² As the Commission has previously recognized, broadband services, such as those provided via private line networks, are generally more readily available to businesses than to residential consumers.¹³ Therefore, it is not necessary to collect additional data concerning availability of broadband services for business customers, except perhaps with respect to the very smallest business.¹⁴

¹⁰ Similarly, the Commission should not lower or eliminate the threshold for broadband reporting. *Id.* ¶ 13. Requiring carriers to collect data for markets in which they serve only a limited number of customers would be unduly burdensome.

¹¹ *Id.* ¶ 22.

¹² *Id.* ¶ 20 (emphasis added).

¹³ *Id.* ¶ 22.

¹⁴ In fact, it would be reasonable for the Commission to forebear from collecting any data concerning broadband deployment for business users and simply to focus on availability of broadband services for residential users. However, if business data is intended to be collected, it must be done with relative accuracy, and thus private line, two-way broadband services must then be counted.

IV. IF THE COMMISSION INTENDS TO COLLECT DATA CONCERNING BROADBAND DEPLOYMENT TO BUSINESS CUSTOMERS, IT SHOULD COLLECT DATA CONCERNING PRIVATE LINES USED FOR TWO-WAY HIGH SPEED TRANSMISSIONS.

If the Commission intends to collect data concerning broadband deployment to business customers, it is not reasonable to continue to exclude from reporting information on private lines.¹⁵ The Commission should permit entities utilizing fixed wireless technology to report point-to-multipoint links and point-to-point private line links used for high-speed services in Part I of the Form. Winstar currently provides private line links to customers throughout the country. These two-way links are used by customers to transmit data at high speeds (including +155 mbps OC-3 system links) between customer locations. Broadband often arrives for many business customers when they can network desktops in buildings throughout their business at +T1 speeds -- all made possible by two-way private lines. The Commission should modify Form 477 to include these links. The revised Form could include a percentage breakout column to isolate these data from high speed services that are provided over the public network. For similar reasons, the Commission decided to gather data on one-way broadband lines, even though one-way broadband lines do not meet the definition of advanced services, noting that "we simply expect to gather data about services that may be stepping stones to full broadband services and we expect that this information will be useful should the Commission decide, in the future, to revise its definition of advanced telecommunications capability in the context of future section 706 reports."¹⁶ The same rationale applies to two-way high speed private line links used for high speed services.

¹⁵ Id. ¶ 22.

¹⁶ In re Local Competition and Broadband Reporting, 15 FCC Rcd 7717, ¶ 26 (2000) ("Local Competition and Broadband Reporting Report and Order").

V. THE COMMISSION SHOULD ENCOURAGE CARRIERS TO VOLUNTARILY PROVIDE ADDITIONAL DATA CONCERNING BROADBAND DEPLOYMENT IN THE COMMENT SECTION OF FORM 477 OR AS ATTACHMENTS TO THE FORM AND SHOULD INCORPORATE THESE DATA IN ITS REPORTS.

The Commission should encourage carriers to provide any additional company-specific information that would shed light on deployment of broadband services, but is not covered by Form 477, in the section of the Form designated for comments or explanatory notes. Similarly, the Commission should permit carriers to attach files containing annual reports and other filings with the Securities and Exchange Commission if this information would shed light on the carrier's nationwide broadband deployment efforts. The Commission should continue to incorporate this information in its annual Advanced Telecommunications Capability reports to present the most accurate picture of broadband deployment across the nation.

VI. THE COMMISSION SHOULD CONTINUE TO PRESUME THAT DATA IN FORM 477 MEETS ITS STANDARDS FOR COMPETITIVELY-SENSITIVE INFORMATION.

The Notice seeks comment on whether the Commission should establish a rebuttable presumption that some or all of the data in Form 477 does not typically meet the standard for competitively-sensitive information.¹⁷ The Commission permits parties submitting confidential information to it to request that the information be withheld from public inspection.¹⁸ The Commission's rules distinguish between information that is "routinely available" for public inspection and information that is not.¹⁹ The former category includes commercial and financial

¹⁷ Notice ¶ 26.

¹⁸ 47 C.F.R. § 0.459.

¹⁹ Id. § 0.457.

information.²⁰ The test for confidentiality of commercial or financial information submitted pursuant to a mandatory data collection is well understood.²¹ Under the test set out in National Parks and Conservation Association v. Morton,²² a commercial or financial matter is confidential if it is likely to “impair the Government’s ability to obtain necessary information in the future” or “cause substantial harm to the competitive position of the person from whom the information was obtained.”²³ The information submitted pursuant to Form 477 meets both criteria. Hence, it would be illogical for the Commission to create a presumption against the confidentiality of this information.

As the Commission has previously recognized, permitting carriers to easily request confidentiality, simply by checking a box, “will lead to a greater level of compliance with this information collection and will give providers confidence that protectible data will not be published in [the Commission’s] regular reports.”²⁴ Lacking such confidence, “companies’ willingness to answer [the] broadband data requests fully and promptly, with a minimum of procedural challenges” would be undermined.²⁵ Certainly, this unwillingness would impair the Commission’s ability to obtain accurate information concerning broadband deployment in a

²⁰ Id.

²¹ See In re Examination of the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, 13 FCC Rcd. 24816, ¶ 4 (1998).

²² 498 F.2d 765 (D.C. Cir. 1974).

²³ Id. at 770.

²⁴ Local Competition and Broadband Reporting Report and Order ¶ 90.

²⁵ Notice ¶ 26.

timely and efficient manner. Hence, establishing a presumption against confidentiality would impair the government's ability to collect these data in the future.²⁶

Moreover, it cannot be emphasized strongly enough that the information submitted in Form 477 is extremely competitively-sensitive. The reporting information currently required by the Commission is relevant to the number of customers served by the carrier, where these customers are located, and the services that are provided to these customers. This is information that a carrier would not ordinarily disclose to its competitors. The new measures that the Commission proposes in the Notice also would require competitively-sensitive information to be disclosed. For example, the Notice contemplates requiring data concerning availability of services, described as "a supplier's capability and willingness to provide service in a given area and within a specified period of time."²⁷ Again, this is exactly the sort of data that would not be disclosed to one's competitors. Therefore, the Commission should not adopt a presumption against the confidentiality of this information.²⁸

²⁶ National Parks and Conservation Assoc., 498 F.2d at 770.

²⁷ Notice ¶ 20.

²⁸ For the same reasons, the Commission should carefully consider whether it is appropriate to make the information submitted pursuant to Form 477 by carriers available for review by outside parties. Id. ¶ 29. If the information is made available to outside academics or analysts, they must be made parties to confidentiality agreements in order to protect the information from public disclosure.

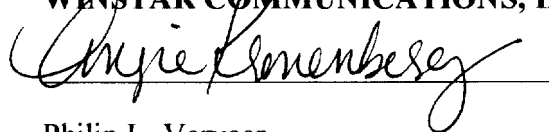
VII. CONCLUSION.

For the foregoing reasons, the Commission should (i) define broadband service with reference to industry transmission standards; (ii) refrain from adopting more detailed reporting measures, or, in the alternative, adopt additional measures only with respect to broadband deployment to residential customers; (iii) collect data concerning deployment of two-way private lines used for high speed services; (iv) encourage carriers to voluntarily provide additional data concerning broadband deployment in the comment section of Form 477 or as attachments to the form and incorporate these data in its reports; and (v) continue to presume that the information submitted is competitively-sensitive.

Respectfully submitted,

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March 19, 2001

CERTIFICATE OF SERVICE

I, Crystal Rogers-Starkey, do hereby certify that on this 19th day of March 2001, copies of the foregoing Comments of Winstar Communications, Inc. were delivered by hand, to the following parties:

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